Dr Vijaendreh a/l Subramaniam (President of Malaysian Association for the Advancement of Functional and Interdisciplinary Medicine) ('MAAFIM') & Anor v Government of Malaysia & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(A)-228-04 OF 2022
ABDUL KARIM, ABU BAKAR JAIS AND COLLIN SEQUERAH JJCA
20 JUNE 2024

Civil Procedure — Appeal — Appeal against High Court's decision — High Court dismissed appellants' application for declaration of their rights as medical practitioners pursuant to provisions of Poisons Act 1952 and Sale of Drugs Act 1952 — Whether appellants' omission to include prayer contained in English version in Bahasa Malaysia version was fatal — Whether appellants had right to dispense Ivermectin as ingredient to their patients under Poisons Act 1952 and read together with Poisons Regulations 1952 — Whether originating summons interfered with criminal investigation conducted against second appellant — Poisons Act 1952 s 19

This was an appeal by the appellants against the decision of the High Court ('HC') in dismissing their originating summons ('OS') filed for declaration of their rights as medical practitioners pursuant to provisions of the Poisons Act 1952 and the Sale of Drugs Act 1952 and related subsidiary legislation. On 14 June 2021, a group of officers of the Pharmaceutical Services Division from the Health Department of Selangor confiscated Ivermectin medicines from the second appellant's clinic. The appellants then filed the OS seeking the following reliefs, inter alia: (a) a determination of whether a registered medical practitioner was entitled to dispense Ivermectin as an ingredient to his or her patient under the Poisons Act 1952 read together with the Poisons Regulations 1952; and (b) a determination of whether a registered medical practitioner could dispense Ivermectin to his or her patients for the purposes of the medical treatment of such patient only and in compliance with s 19 of the Poisons Act 1952 and the Poisons Regulations 1952. At the time of filing the OS, the second appellant was under investigation by the Pharmacy Services Division of the Selangor Health Department for potential offences in relation to the dispensation of Ivermectin over the counter at his clinic. The respondents at the outset raised an objection with regard to the reliefs claimed in the OS based upon an omission to include a prayer contained in the English version in the Bahasa Malaysia version. The learned HC judge ('HCJ') held that this omission was fatal and that the court was not entitled to grant the relief based on what was not expressly pleaded. The HCJ also found that the OS was

brought with a collateral purpose of interfering with the criminal investigation conducted against the second appellant. The OS was dismissed and hence, this appeal.

Held, allowing the appeal:

(1) The error of not including the prayer in the Bahasa Malaysia version was not fatal and ought not be a reason to dismiss the OS. This resulted due to an inadvertent error in the OS by omitting the prayer in the Bahasa Malaysia's version of the OS. It was an error not done with purpose and had not prejudiced the respondents in any manner. There was no miscarriage of justice as the respondents were fully aware of the case set forth by the appellants as could be understood by the English version of the OS. Thus, there was no merit in the respondents' contention in this regard (see paras 44–46, 49 & 51).

(2) Both appellants being medical practitioners, had the right to sell, supply or administer Group B medicines including Ivermectin by retail so long as it was in accordance with s 19 of the Poisons Act 1952. The contention by the respondents that there was a regulatory regime for the sale and use of drugs and poisons referring to regs 7 and 15 of the Control of Drugs and Cosmetics Regulations 1984 to assert that this supported a 'regulatory requirement' to prohibit the use of Ivermectin, was misconceived. The vested right could not be interpreted by provisions of subsidiary legislation to remove such vested right under the Poisons Act 1952 (see paras 57, 59 & 70).

(3) There should be no impediment for the second appellant to file the OS to seek the declarations from the HC on his position and right under the Act. This was despite the ongoing investigation on him. There were appealable errors in the decision of the HC and thus the HC's order was set aside (see paras 74 & 82–83).

[Bahasa Malaysia summary

Ini adalah rayuan oleh perayu terhadap keputusan Mahkamah Tinggi ('MT') dalam menolak saman pemula ('SP') mereka yang difailkan untuk pengisytiharan hak mereka sebagai pengamal perubatan berdasarkan peruntukan Akta Racun 1952 dan Akta Jualan Dadah 1952 serta undang-undang subsidiari berkaitan. Pada 14 Jun 2021, sekumpulan pegawai dari Bahagian Perkhidmatan Farmasi Jabatan Kesihatan Selangor telah merampas ubat Ivermectin dari klinik perayu kedua. Perayu kemudian memfailkan SP untuk mendapatkan relif berikut, antara lain: (a) penentuan sama ada pengamal perubatan berdaftar berhak mengeluarkan Ivermectin sebagai ramuan kepada pesakitnya di bawah Akta Racun 1952 dibaca bersama dengan Peraturan Racun 1952; dan (b) penentuan sama ada pengamal perubatan berdaftar boleh mengeluarkan Ivermectin kepada pesakitnya untuk

tujuan rawatan perubatan pesakit tersebut sahaja dan mematuhi s 19 Akta Racun 1952 dan Peraturan-Peraturan Racun 1952. Pada masa pemfailan SP, perayu kedua sedang disiasat oleh Bahagian Perkhidmatan Farmasi Jabatan Kesihatan Selangor atas potensi kesalahan berkaitan pengeluaran Ivermectin di kaunter kliniknya. Responden pada awalnya membangkitkan bantahan berhubung dengan relif yang dituntut dalam SP berdasarkan peninggalan untuk memasukkan satu permohonan yang terkandung dalam versi Bahasa Inggeris ke dalam versi Bahasa Malaysia. Hakim Mahkamah Tinggi yang bijaksana ('HMT') menyatakan bahawa peninggalan ini adalah fatal dan mahkamah tidak berhak memberikan relif berdasarkan apa yang tidak diplid secara jelas. HMT juga mendapati bahawa SP dibawa dengan tujuan sampingan untuk campur tangan dalam siasatan jenayah yang dijalankan terhadap perayu kedua. SP telah ditolak dan oleh itu, rayuan ini.

Diputuskan, membenarkan rayuan:

(1) Kesilapan tidak memasukkan permohonan dalam versi Bahasa Malaysia tidak bersifat fatal dan tidak sepatutnya menjadi alasan untuk menolak SP. Kesilapan ini berlaku secara tidak sengaja dengan mengabaikan permohonan dalam SP versi Bahasa Malaysia. Ia bukan kesilapan yang disengajakan dan tidak menjejaskan responden dalam apa jua cara. Tiada ketidakadilan yang berlaku kerana responden sepenuhnya mengetahui kes yang dikemukakan oleh perayu seperti yang dapat difahami melalui SP versi Bahasa Inggeris. Oleh itu, tiada merit dalam hujahan responden dalam hal ini (lihat perenggan 44–46, 49 & 51).

(2) Kedua-dua perayu sebagai pengamal perubatan, mempunyai hak untuk menjual, membekal atau menguruskan ubat Kumpulan B termasuk Ivermectin secara runcit selagi ia mematuhi s 19 Akta Racun 1952. Pendirian responden bahawa terdapat rejim kawal selia untuk penjualan dan penggunaan ubat-ubatan dan racun dengan merujuk kepada peraturan 7 dan 15 Peraturan-Peraturan Kawalan Dadah dan Kosmetik 1984 untuk menyokong 'keperluan peraturan' bagi melarang penggunaan Ivermectin adalah salah faham. Hak yang diperuntukkan tidak boleh ditafsirkan oleh peruntukan undang-undang subsidiari untuk menghilangkan hak yang diperuntukkan tersebut di bawah Akta Racun 1952 (lihat perenggan 57, 59 & 70).

(3) Tidak sepatutnya ada halangan bagi perayu kedua untuk memfailkan SP bagi mendapatkan pengisytiharan daripada MT mengenai kedudukan dan haknya di bawah Akta tersebut. Ini adalah walaupun terdapat siasatan yang sedang berjalan terhadapnya. Terdapat kesilapan yang boleh dirayu dalam keputusan MT dan oleh itu perintah MT telah diketepikan (lihat perenggan 74 & 82–83).]

Cases referred to

Datuk Syed Kechik bin Syed Mohamed v Government of Malaysia and Anor [1979] 2 MLJ 101, FC (folld)

Sivarasa Rasiah v Badan Peguam Malaysia & Anor [2002] 2 MLJ 413, CA (refd)

Tey Por Yee & Anor v Protasco Bhd and other appeals [2021] 1 MLJ 76, CA (refd)

Wong Leh Yin v PP [2013] 5 MLJ 820, CA (refd)

YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener) [2009] 4 MLJ 24, FC (refd)

Legislation referred to

Control of Drugs and Cosmetic Regulations 1984 regs 7, 7(1), 15, 15(2)
Medical Act 1971
Poisons Act 1952 ss 2, 12, 12(1)(c), 18, 18(1)(c), 19, 19(1)(a), (3), 21, (1), (1)(b), (2), Part 1
Poisons Regulations 1952
Sale of Drugs Act 1952
Societies Act 1966

Appeal from: *Dr Vijaendreh a/l Subramaniam (Chairman for the Malaysian Association for the Advancement of Functional and Interdisciplinary Medicine (MAAFIM)) & Anor v Kerajaan Malaysia & Anor* [2023] 7 MLJ 922 (High Court, Kuala Lumpur)

Gurdial Singh Nijar (with Abraham Au Tian Hui and Lim Sze Han) (Yeoh Mazlina & Partners) for the appellant.

Rahazlan Affandi bin Abdul Rahim (with Liew Horng Bin and Saravanan a/l Kuppusamy) (Federal Counsel, Attorney General's Chambers) for the respondent.

Collin Sequerah JCA:

INTRODUCTION

[1] This is an appeal by the appellants against the decision of the High Court dated 24 March 2022 in dismissing their originating summons ('OS') filed for certain declaration of their rights as medical practitioners pursuant to provisions of the Poisons Act 1952 and the Sale of Drugs Act 1952 and related subsidiary legislation.

BACKGROUND FACTS

[2] The first appellant is a qualified medical practitioner and registered under the Medical Act 1971 and was at all material times, a specialist consultant doctor at Mahkota Medical Centre Sdn Bhd, at No 3, Mahkota

Melaka, Jalan Merdeka, 75000 Melaka.

[3] He is also the President of the Malaysian Association for the Advancement of Functional and Interdisciplinary Medicine ('MAAFIM') and brought this action on behalf of himself and all other members of MAAFIM.

[4] MAAFIM is a national association which is registered under the Societies Act 1966 . Its members comprise medical registered practitioners with varied specialist qualifications in a diverse range of medical fields.

[5] The second appellant is a qualified and registered medical practitioner under the Medical Act 1971 and operates a clinic under the name and style of Klinik Medik at 9156 Jalan Bandar 4, Taman Melawati, 53100 Kuala Lumpur. He is also a member of MAAFIM.

[6] On 14 June 2021, a group of officers identifying themselves as officers of the Pharmaceutical Services Division from the Health Department of Selangor confiscated Ivermectin medicines from the second appellant's clinic.

[7] The appellants then filed the instant OS asking for various declaratory orders which were dismissed by the High Court. Hence, this appeal.

PARTIES SUBMISSIONS

The appellants

[8] In the OS, the appellants asked for the following reliefs (in Bahasa Malaysia):

(a) Pentafsiran peruntukan-peruntukan —

(i) Akta Racun 1952 termasuk seksyen 2, 12 (1) (c), 18(1)(c), 19 dan 21 (1) dan (2) ; dan

(ii) Peraturan-Peraturan Racun 1952 termasuk Jadual Pertama Bahagian 1 Kategori B;

(b) Satu Penentuan sama ada seorang pengamal perubatan adalah berhak untuk mendispens (dispense) Ivermectin sebagai suatu bahan ramuan kepada pesakit-pesakitnya di bawah Akta Racun 1952 dibaca bersama dengan Peraturan-Peraturan Racun 1952;

(c) Satu Penentuan sama ada seorang pengamal perubatan boleh mendispens Ivermectin kepada pesakit-pesakitnya bagi tujuan rawatan perubatan pesakit tersebut sahajajdan selaras dengan seksyen 19 Akta Racun 1952 Peraturan-Peraturan Racun 1952;

(d) Kos; dan

A (e) Lain-lain relif yang mana Mahkamah yang Mulia ini anggap sesuai, wajar dan adil, inter alia, bidang kuasa sedia ada Mahkamah yang Mulia ini.

[9] The English translation of the reliefs read as follows:

B (a) The interpretation of the provisions of:

(i) the Poisons Act 1952 including sections 2, 12 (1)(c), 18 (1) (c), 19 and 21 (1) and (2) ; and

(ii) the Poisons Regulations 1952 including the First Schedule Part 1 Category B.

C

(b) A Determination of whether a registered medical practitioner is entitled to dispense Ivermectin as an ingredient to his or her patient under the Poisons Act 1952 read together with the Poisons Regulations 1952.

D (c) A Determination of whether a registered medical practitioner can dispense Ivermectin to his or her patients for the purposes of the medical treatment of such patient only and in compliance with section 19 of the Poisons Act 1952 and the Poisons Regulations 1952.

(d) Declarations, as appropriate, ensuing from the determinations and interpretation as aforesaid.

E

(e) Costs; and

(f) Such further or other relief which this Honourable Court deems fit, appropriate and just to order under, inter alia, the inherent jurisdiction of this Honourable Court.

F

[10] The significance of setting out both the English and Bahasa Malaysia is with regard to the omission to plead in the Bahasa Malaysia version for the relief of 'declarations as appropriate, ensuing from the determinations and G interpretation as aforesaid' under prayer (d) above.

[11] The appellants submitted that the learned HCJ had erred when he dismissed the OS on the ground that as the Bahasa Malaysia version of the OS did not contain prayer (d) for 'Declarations, as appropriate, ensuing from the H determinations and interpretation as aforesaid', the appellants' OS suffers from fatal non-compliance and that the court was not entitled to grant relief in respect of matters not pleaded.

I **[12]** In respect of the substantive issue in this appeal, the appellants submitted that the HCJ failed to holistically interpret the statutory right of registered medical practitioners to dispense Group B poisons under the Poisons Act 1952 and Poisons Regulations 1952 and its interface with the Sale of Drugs Act, consistent with the purpose and object of these legislations.

[13] The appellants submitted that the legislative scheme of the Poisons Act 1952 allows for the right of registered medical practitioners to dispense certain substances classified as poisons.

[14] In particular, they cited s 19(1)(a) of the Poisons Act 1952 which allows a registered medical practitioner to sell, supply or administer any poison other than Group A poison to his patient for purposes of medical treatment provided that such sale or supply must be done under the immediate supervision of the said medical practitioner pursuant to s 19(3) of the same.

[15] It was also submitted that s 18 provides that Part I poisons cannot be sold or supplied to any person, but registered medical practitioners are exempted from this prohibition.

[16] The appellants submitted that the HCJ had erred when he held that a medical practitioner's statutory right under an Act of Parliament to dispense Group B Poisons to patients — both for the purpose of treatment (s 19 of the Poisons Act) and retail (s 21 of the Poisons Act), was further subject to a requirement that the said drug must first be a registered product under a subsidiary legislation.

[17] They submitted that the HCJ in coming to the said finding had relied upon reg 7(1) of the Control of Drugs and Cosmetic Regulations 1984 which reads as follows:

> Regulation 7 Prohibition against manufacture, sale, supply, importation, possession and administration
>
> (1) Except as otherwise provided in these Regulations, no person shall manufacture, sell, supply, import or possess or administrator any product unless —
>
> (a) the product is a registered product;
>
> (b) the person holds the appropriate licence required and issued under these Regulations.

[18] The appellants submitted that medical practitioners cannot be subject to an additional requirement of 'registration' (purportedly derived from reg 7 of the Control of Drugs and Cosmetics Regulations 1984), before they may exercise their vested right under ss 18 and 19 of the Poisons Act 1952 to administer a drug for the treatment of patients.

[19] The appellants submitted that the said finding by the HCJ would result in the Sale of Drugs Act and in particular reg 7 of the Control of Drugs and Cosmetics Regulations 1984, negating and supplanting the provisions of the Poisons Act including ss 2, 12, 15, and 19 .

A **[20]** The appellants further submitted that the right of registered medical practitioners to dispense Ivermectin is pursuant to the provisions of the Poisons Act 1952 and cannot be subject to subsidiary legislation under an entirely different Act ie Sale of Drugs Act 1952, which purpose is to deal with the sale of drugs on a retail basis.

B

[21] The appellants also submitted that there was no basis, as contended for by the respondents, that the OS was in effect an attempt to move the civil court to pre-empt and challenge the lawfulness of criminal investigation that had been commenced against the second appellant.

C

[22] They submitted to the contrary that the OS was brought to solely determine the vested rights of registered and professionally trained medical practitioners to dispense medicine under the Poisons Act 1952.

D

[23] Finally, the appellants submitted that the thrust of their case is not asking the court to 'make new public health policy' or 'to substitute own view on scientific and technical policies' as suggested by the respondents.

E *The respondents*

[24] The respondents submitted that at the time of filing the OS, the second appellant was under investigation by the Pharmacy Services Division of the Selangor Health Department for potential offences in relation to the dispensation of Ivermectin over the counter at his clinic and that the said ongoing criminal investigation was relied upon by the second appellant in support of the OS.

F

G **[25]** The respondents submitted thus that the function of the civil court is not to usurp the jurisdiction of the criminal court in determining issues of criminality, nor the power of the public prosecutor in instituting criminal charges.

H **[26]** The respondents contended that criminal issues should not be tried and determined in a civil court by the civil process. To do so would amount to an invitation to the civil court to exercise criminal jurisdiction which is not permissible.

I **[27]** The court had no business interfering with ongoing criminal investigation and therefore had no jurisdiction to hear such matters.

[28] The respondents submitted next that the regulatory framework for the sale and use of drugs and poisons is found in a number of statutes and statutory

instruments which are the Poisons Act 1952 and its regulations and the Sale of Drugs Act 1952 and its regulations, including the 1984 Regulations.

[29] The sale and supply of drugs and poisons are subject to all the requirements found within the entirety of this framework. Regulation 7(1) of the 1984 Regulations reads:

> 7 Prohibition against manufacture, sale, supply, importation, possession and administration
>
> (1) Except as otherwise provided in these Regulations, no person shall manufacture, sell, supply, import or possess or administer any product unless —
>
> (a) the product is a registered product; and
>
> (b) the person holds the appropriate licence required and issued under these Regulations.

[30] It was submitted therefore that reg 7(1) of the 1984 Regulations expressly prohibits the sale and supply of any product, subject to two cumulative requirements as follows:

(a) the product must itself be registered; and

(b) the person must have a licence.

[31] The second requirement is subject to certain exemptions in reg 15(2) of the 1984 Regulations. With regard to the phrase 'as regards a licence to supply and manufacture' the second requirement in reg 7(1) of the 1984 Regulations does not apply to the dispensation of a drug by a medical practitioner for the purposes of it being used for the medical treatment of their patients.

[32] However, it was submitted that there is no exemption for the first requirement under reg 15(2) of the 1984 Regulations.

[33] At present, the respondents submitted, no product with Ivermectin as an active ingredient has been registered with the Drug Control Authority for human use. The present regulatory requirements are thus clear and since Ivermectin products are not registered in the first place, there is no question of them being supplied for human use, whether by a medical practitioner for the treatment of his patients or otherwise.

[34] It was further submitted that to date, the use of Ivermectin for the treatment of Covid-19 is only permitted for the purpose of clinical trials subject to the approval of the Ministry of Health which is in line with the guidance of the World Health Organisation while clinical trials to establish the efficacy and the effectiveness of Ivermectin have yet to be concluded

[35] The respondents submitted that while the appellants do not dispute that Ivermectin is not registered for human use nor do they challenge the validity of any provision within the regulatory framework they urged the court to hold that medical practitioners have a right to dispense Ivermectin to their patients, contrary to the regulatory framework and the policy of the respondents, by relying on only selected provisions in Act 366 and the 1952 Regulations.

[36] The respondents finally submitted that what the court is effectively being asked to do is to establish a new public health policy for Ivermectin to be used in human medical treatment.

[37] They submitted that the courts ought to refrain from determining what are essentially policy matters in the field of scientific and technical expertise.

ANALYSIS

Technical objection

[38] The respondents at the outset raised an objection with regard to the reliefs claimed in the OS based upon an omission to include a prayer contained in the English version in the Bahasa Malaysia version.

[39] The HCJ held that this omission was fatal and that the court was not entitled to grant the relief based on what was not expressly pleaded.

[40] In order to determine this issue, it is pertinent to set out in full, at risk of repetition, the reliefs claimed in both the Bahasa Malaysia and English versions.

[41] The reliefs sought in the OS (in Bahasa Malaysia) were as follows:

(a) Pentafsiran peruntukan-peruntukan —

(i) Akta Racun 1952 termasuk seksyen 2, 12 (1) (c), 18(1)(c), 19 dan 21 (1) dan (2) ; dan

(ii) Peraturan-Peraturan Racun 1952 termasuk Jadual Pertama Bahagian 1 Kategori B;

(b) Satu Penentuan sama ada seorang pengamal perubatan adalah berhak untuk mendispens (dispense) Ivermectin sebagai suatu bah an ramuan kepada pesakit-pesakitnya di bawah Akta Racun 1952 dibaca bersama dengan Peraturan-Peraturan Racun 1952;

(c) Satu Penentuan sama ada seorang pengamal perubatan boleh mendispens Ivermectin kepada pesakit-pesakitnya bagi tujuan rawatan perubatan pesakit

tersebut sahaja dan selaras dengan seksyen 19 Akta Racun 1952 Peraturan-Peraturan Racun 1952;

(d) Kos; dan

(e) Lain-lain relif yang mana Mahkamah yang Mulia ini anggap sesuai, wajar dan adil inter alia, bidang kuasa sedia ada Mahkamah yang Mulia ini

[42] The English translation of the appellants' OS was as follows:

(a) The interpretation of the provisions of:

(i) the Poisons Act 1952 including sections 2, 12 (1)(c), 18 (1) (c), 19 and 21 (1) and (2) ; and

(ii) the Poisons Regulations 1952 including the First Schedule Part 1 Category

(b) A Determination of whether a registered medical practitioner is entitled to dispense Ivermectin as an ingredient to his or her patient under the Poisons Act 1952 read together with the Poisons Regulations 1952.

(c) A Determination of whether a registered medical practitioner can dispense Ivermectin to his or her patients for the purposes of the medical treatment of such patient only and in compliance with section 19 of the Poisons Act 1952 and the Poisons Regulations 1952.

(d) Declarations, as appropriate, ensuing from the determinations and interpretation as aforesaid.

(e) Costs; and

(f) Such further or other relief which this Honourable Court deems fit, appropriate and just to order under, inter alia, the inherent jurisdiction of this Honourable Court.

[43] As already alluded to, the learned HCJ held that the appellants had fatally not prayed in Bahasa Malaysia for prayer (d) for 'Declarations, as appropriate, ensuing from the determinations and interpretation as aforesaid', as shown in the English version of the OS.

[44] Upon hearing and considering the parties' submissions, however, we find that the error of not including the above prayer in the Bahasa Malaysia version is not fatal and ought not be a reason to dismiss the OS.

[45] We are of the considered view that this resulted due to an inadvertent error in the OS by omitting the said prayer in the Bahasa Malaysia's version of the OS.

[46] It is an error not done with purpose and had not prejudiced the respondents in any manner. It is also important to note that the respondents did not state how they were prejudiced by this omission.

[47] The Court of Appeal in *Sivarasa Rasiah v Badan Peguam Malaysia & Anor* [2002] 2 MLJ 413 held that the court is equipped with the power to grant suitable orders although the cause papers might be inadequate in its particulars. The court said there as follows:

> Under para 1 of the Schedule to the CJA, the courts had power to issue such orders and grant such relief as was appropriate to the particular circumstances of a given case. Since the High Court had ample power and jurisdiction to grant appropriate relief after hearing full argument on the substantive motion, the point about the motion paper suffering from inadequacies of drafting, justifiably made in present case, came to naught.

[48] In *Wong Leh Yin v Public Prosecutor* [2013] 5 MLJ 820 the Court of Appeal dealt with a situation where a petition of appeal emanated from a High Court case in Sarawak. The said petition was filed in Bahasa Malaysia and not in English as provided for.

[49] Nonetheless, the Court of Appeal refused to strike out the petition of appeal in this case as there is no miscarriage of justice. Likewise, in the present case too before us, we find that there is no miscarriage of justice as the respondents were fully aware of the case set forth by the appellants as could be understood by the English version of the OS.

[50] In any event, the failure to state in the OS that the appellants were asking for declarations to be granted as appropriate to the facts of the case in Bahasa Malaysia could not justify the dismissal of the OS in view of the case *Sivarasa Rasiah* as mentioned earlier.

[51] We thus find no merit in the respondents' contention in this regard.

Substantive issue

[52] Having dispensed with the technical aspect of the case, we now deal with the substantive issue. It is apposite here to begin by looking at the core reliefs sought by the appellants which bear repetition as follows:

(a) Satu penentuan sama ada seorang pengamal perubatan adalah berhak untuk mendispens (dispense) Ivermectin sebagai suatu bahan ramuan kepada pesakit-pesakitnya di bawah Akta Racun 1952 dibaca bersama dengan Peraturan-Peraturan Racun 1952;

(b) Satu Penentuan sama ada seorang pengamal perubatan boleh mendispens ivermectin kepada pesakit-pesakitnya bagi tujuan rawatan perubatan pesakit tersebut sahaja dan selaras dengan seksyen 19 Akta Racun 1952 Peraturan-Peraturan Racun 1952.

[53] The English translation of the above reads: A

(a) A determination of whether a registered medical practitioner is entitled to dispense Ivermectin as an ingredient to his or her patient under the Poisons Act 1952 read together with the Poisons Regulations 1952.

(b) A determination of whether a registered medical practitioner can dispense Ivermectin to his or her patients for the purposes of the medical treatment of such patient only and in compliance with s 19 of the Poisons and the Poisons Regulations 1952. B

[54] To place matters in context, we stress here that the avowed positions taken by the appellants were as follows: C

(a) the appellants were not asking the court to recognise Ivermectin as an effective alternative solution to combat Covid-19;

(b) the appellants were not suggesting that the existing health policies (ie the lockdown restrictions or usage of face masks) are less effective than a proposed treatment through Ivermectin; D

(c) the appellants were not suggesting that the vaccination program introduced by the Government can be replaced by treatment by Ivermectin; and E

(d) the appellants were not touching on the merits or demerits of Ivermectin and Covid-19.

[55] The second and core issue of relevance in this case is whether there is a right for the appellants to dispense Ivermectin as an ingredient to their patients under the Poisons Act 1952 ('the Act') and read together with Poisons Regulations 1952. F

[56] The relevant statutory provision in this regard is s 19 of the Act which states as follows: G

(1) Any poison other than a Group A Poison may be sold, supplied or administered by the following persons for the following purposes:

(a) a registered medical practitioner may sell, supply or administer such poison to his patient for the purposes of the medical treatment of such patient only ... H

(2) A registered dentist Division II may sell, supply or administer to his patient for the purposes of the dental treatment of such patient only any poison other than a Group A or a Group B Poison I

(3) Every medicine containing any poison sold or supplied under subsection (1) or (2) shall be prepared by or under the immediate personal supervision of such practitioner, dentist or veterinary officer, as the case may be:

[57] There is no dispute that Ivermectin is listed in Group B and not Group A. Looking at the above statutory provision too, it is clear to us that both appellants being medical practitioners, have the right to sell, supply or administer Group B medicines including Ivermectin by retail so long as it is in accordance with s 19 of the Act.

[58] It is also clear Ivermectin may be sold, supplied or administered to the appellant's patients for the purposes of medical treatment. This would mean the second relief should be determined in favour of the appellants.

[59] The contention by the respondents that there is a regulatory regime for the sale and use of drugs and poisons referring to regs 7 and 15 of the Control of Drugs and Cosmetics Regulations 1984 to assert that this supports a 'regulatory requirement' to prohibit the use of Ivermectin, is misconceived.

[60] The stand taken by the respondents fails to make any reference to the Sale of Drugs Act 1952 and the Poisons Act 1952 respectively. It is also to be noted that these pieces of legislation were enacted almost simultaneously, the year of enactment being similar.

[61] In this regard, we agree with the submission by the appellants that the rule of interpretation that where Acts of Parliament are in *pari materia*, that is to say, related as to form a system or code of legislation, these Acts must be construed harmoniously; and avoid any interpretation to ensure that Parliament does not give with one hand only to have taken away with the other.

[62] In this regard, we associate ourselves with what was said in the case cited by the appellants namely, the Court of Appeal decision in *Tey Por Yee & Anor v Protasco Bhd and other appeals* [2021] 1 MLJ 76 at p 117 as follows:

> In Craies, on 'Statute Law' (6th Ed) at p 133, it is stated:
>
> > *Where Acts of Parliament are in pari materia, that is to say, are so far related as to form a system or code, of legislation, the rule as laid down by the twelve judges in Palmer's Case [(1785) 1 Leach CC 4th Ed, 355], is that such Acts 'are to he taken together as forming one system, and as interpreting and enforcing each other'*. In the American case of *United Society v Eagle Bank* [(1829) 7 Conn 457 , 470], Hosmer J said: 'Statutes are in pari materia which relate to the same person or thing or to the same class of persons or things ...
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> In Maxwell on 'The Interpretation of Statutes' (11th Ed) at p 153, the principle is stated thus:
>
> > An author must be supposed to be consistent with himself, and, therefore, if in one place he has expressed his mind clearly, it ought to be presumed that he is still of the same mind in another place, unless it clearly appears that he has changed it. In this respect, the work of the legislature is treated

> in the same manner as that of any other author, and the language of every enactment must be construed as far as possible in accordance with the terms of every other statute which it does not in express terms modify or repeal ... *It cannot he assumed that Parliament has given with one hand what it has taken away with the other*. (Emphasis added.)

[63] A perusal of the Poisons Act 1952 and the Sale of Drugs Act 1952, both enacted in 1952, will show that it deals with the subject matter of drugs.

[64] While the Poisons Act 1952 deals with the importation, possession, manufacture, compounding, storage, transport, sale and use of poisons, the Sale of Drugs Act 1952 relates to the aspect of sale.

[65] As put by the appellants, the legitimate question to pose is whether it is permissible to construe subsidiary legislation under the Sale of Drugs Act 1952 in a manner that takes away a right vested under the Poisons Act 1952.

[66] It can be seen that ss 18, 19 and 21 of the Poisons Act 1952 were specifically enacted to vest an autonomous right to medical practitioners to dispense and administer a drug based on their professional judgement.

[67] Specifically excluded from the general definition of 'supply' under s 2 of the Poisons Act 1952 is the exclusive right conferred on medical practitioners pursuant to s 19 .

[68] Section 21(1)(b) of the Poisons Act 1952 specifically provides that Group B Poison shall not be sold or supplied by retail to any person except by a registered medical practitioner, registered dentist Division I or registered veterinary surgeon selling or supplying the same in accordance with s 19 .

[69] As earlier alluded to, it is not in dispute that Ivermectin is listed as a Group B poison.

[70] This unarguably provides a vested right to registered medical practitioners to sell or supply Ivermectin. We, therefore, hold that this vested right cannot be interpreted by provisions of subsidiary legislation to remove such vested right under the Poisons Act 1952.

[71] What we have decided with regard to this issue would also mean that the finding of the learned HCJ that the appellants had wanted to change the government's policy of not using Ivermectin for the treatment of Covid-19 is with respect, irrelevant and a non-issue.

[72] The OS has nothing to do with any assertion or connection between Ivermectin and Covid-19.

[73] The next issue we will deal with is on the finding by the learned HCJ that the OS was brought with a collateral purpose of interfering with the criminal investigation conducted against the second appellant.

[74] On this issue, we are of the considered view that there should be no impediment for the second appellant to file the OS to seek the declarations from the HC on his position and right under the Act. This is despite the ongoing investigation on him.

[75] In this regard we are guided by the Federal Court case of *Datuk Syed Kechik bin Syed Mohamed v Government of Malaysia and Anor* [1979] 2 MLJ 101 . This case illustrates the point that a declaration of the rights of a party can be requested from the court before the event that party is trying to avoid.

[76] The judgments of both Suffian LP and Lee Hun Hoe FCJ reflect this fact. Suffian LP said:

> In my view, the *applicant has a real fear that he may be expelled from Sabah, and it is desirable for the court to declare whether or not the Federal and State Governments have a right to expel the applicant, so that all parties concerned will know exactly where they stand*. (Emphasis added.)

Lee Hun Hoe FCJ held as follows:

> It is the submission of appellant that he has no other remedy of establishing his right to reside in Sabah. The declaration sought is not as to his future right but as to his present right. There has been a threat to his right by official statement of the party in power. *The threat has never been denied or withdrawn … He need not have to wait for something to happen before seeking the court's protection*. See *Dyson v Attorney-General* [1911] 1 KB 410 *; Grant v Knaresborough UDC* [1928] 1 Ch 310 and *Pyx Granite Co Ltd v Ministry of Housing and Local Government & Ors* [1960] AC 260 . A declaratory order will eliminate anxiety of having to live under a cloud of fear. (Emphasis added.)

[77] The other relevant authority is *YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener)* [2009] 4 MLJ 24 .

[78] In this case, a few assemblymen of the Perak Legislative Assembly brought an action in court to determine whether or not the decision to suspend them as assemblymen was null and void.

[79] A contention was raised as to whether or not the action brought for declarations was an abuse of process and to frustrate the disciplinary process against the assemblymen.

[80] The Federal Court dismissed that contention and found that the assemblymen had the right to file the action to seek legal clarity on their position as assemblymen.

[81] These two cases of the apex court are in our considered view, sufficient authorities to indicate that the second appellant is at liberty to file the OS to seek the declarations from the HC on his position and right under the Act. This is notwithstanding the investigation for possible offences against him.

[82] Based on all the reasons given above, we are unanimous that there are appealable errors in the decision of the HC.

[83] Hence, we set aside the HC's order and allow the appeal of the appellants with costs of RM30,000 subject to allocator.

[84] We also order that the following two reliefs sought for be answered in the affirmative:

(a) Satu penentuan sama ada seorang pengamal perubatan adalah berhak untuk mendispens (*dispense*) Ivermectin sebagai suatu bahan ramuan kepada pesakit-pesakitnya di bawah Akta Racun 1952 dibaca bersama dengan Peraturan-Peraturan Racun 1952;

(b) Satu penentuan sama ada seorang pengamal perubatan boleh mendispens Ivermectin kepada pesakit-pesakitnya bagi tujuan rawatan perubatan pesakit tersebut sahaja dan selaras dengan s 19 Akta Racun 1952 Peraturan-Peraturan Racun 1952.

Appeal allowed.

Reported by Nabilah Syahida Abdullah Salleh